

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

JOSH RHEAUME,  
Plaintiff

v.

ROBERT HOFMANN, VERMONT  
DEPARTMENT OF CORRECTIONS,  
KEITH TALLON, DOMINIC DAMATO,  
Defendants

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File No. 1:07-cv-262

**ORDER**

The Magistrate Judge's Report and Recommendation was filed September 8, 2008. (Paper 22.) After de novo review and absent objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

The motion to dismiss filed on behalf of defendants Hofmann and Vermont Department of Corrections (Paper 21) is GRANTED. Pursuant to plaintiff's amended complaint, defendant John Gorczyk has been terminated as a party. The prior motion to dismiss filed on behalf of defendants Hofmann and Gorczyk (Paper 8) is DENIED as moot.

This matter is returned to Magistrate Judge Jerome J. Niedermeier for further proceedings.

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 22<sup>nd</sup> day of October,  
2008.

/s/ J. Garvan Murtha

J. Garvan Murtha  
United States District Judge